

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of AT&T Inc. for Interim)	
Declaratory Ruling and Limited Waivers)	WC Docket No. 08-152
Regarding Access Charges and the ESP)	
Exemption)	

**COMMENTS OF THE
TEXAS OFFICE OF PUBLIC UTILITY COUNSEL**

The Texas Office of Public Utility Counsel ("TOPC")¹ respectfully submits these comments in response to AT&T Inc.'s (AT&T) petition seeking comprehensive reform, or in the alternative an interim declaratory ruling and limited waivers regarding access charges. AT&T is seeking rulings that are not intended to be a substitute for comprehensive intercarrier compensation reform but are designed to facilitate substantial progress toward that end by: (1) providing certainty regarding the proper terminating charges applicable to Internet Protocol (IP)-to public switched telephone network (PSTN) traffic and PSTN-to-IP traffic (collectively IP/PSTN); and (2) enabling AT&T to eliminate the disparity between its interstate and intrastate terminating switched access rates in many states.²

¹ A state agency created by the Texas Legislature to represent the interest of residential and small commercial consumers involving telephone and electric utility issues. Public Utilities Regulatory Act, Tex. Gov't Code Ann. §13.001 (Vernon 1998 & Supp. 2005).

² See AT&T's petition at 4.

Background

In AT&T's petition in this proceeding it suggests that the Federal Communication Commission (Commission) has failed to address the appropriate compensation that applies when traffic that originates in the IP is terminated to a party served by the PSTN and, conversely, when PSTN-oriented traffic is terminated to a party served by an IP-network. According to AT&T the Commission recognized the issue more than a decade ago but has failed to act in a comprehensive manner. AT&T believes that because the Commission has failed to act the matter has been left to be decided *ad hoc* by state commissions and the courts through section 252 arbitrations and litigation. As a result, the current regime creates opportunities for regulatory arbitrage and incentives for inefficient investment and deployment decisions.

AT&T claims in its petition that it is providing the Commission a blueprint for achieving the core goal of – reducing and unifying terminating intercarrier compensation charges through rate rebalancing and targeted universal support – by the end of 2008, consistent with the Commission's publicly stated timeline for adopting an order addressing comprehensive reform.³

The AT&T Petition

There are two parts to AT&T's petition. First, AT&T seeks a declaratory ruling (or waiver) that would, *inter alia*, enable it to assess intrastate terminating access charges on IP/PSTN traffic where its intrastate terminating access rates are at parity with its interstate rates. AT&T states that pursuant to the Commission's existing rules and precedents access charges apply to that traffic. In the case where the Commission does

³ *Id* at 3.

not permit the declaratory ruling AT&T asks for a waiver of the relevant rules to achieve the same ends.

The second part of the petition involves states where AT&T must affirmatively reduce existing intrastate terminating access rates to interstate levels in order to be eligible for the declaratory ruling (waiver) discussed above.⁴ AT&T proposes two mechanisms to facilitate that result by allowing AT&T to increase certain interstate rates to offset AT&T's foregone intrastate access revenues. Those mechanisms include: (1) adjustment to subscriber line charges (SLC); and (2) adjustment to interstate originating access charges if necessary. When combined with any SLC increases the aggregate amount of all increases in interstate charges would be no more than necessary to offset, on a dollar-for-dollar basis, the amount by which AT&T reduces its intrastate terminating access revenues to achieve parity.⁵

Discussion

It is TOPC's view that this petition may be premature given the Commission's commitment to move forward with comprehensive intercarrier compensation reform.⁶ An order in this proceeding might result in additional uncertainty and risk for market participants. However, we will offer our comments at this time.

The AT&T petition can be summarized below:

AT&T will "voluntarily" decrease its intrastate access charges applicable to all intrastate traffic in order to collect access charges for intrastate "interchange IP/PSTN" traffic, but its customers will **involuntarily** be required to pay higher SLCs [subscriber line charge] (and its carrier customers may have to **involuntarily** have to pay increased originating interstate access charge) (sic) in

⁴ *Id* at 8.

⁵ *Id* at 9-10

⁶ *Id.* At 3.

order to allow AT&T to recover the lost revenues from the reduced intrastate charges applicable to all intrastate traffic (emphasis in the original)⁷

TOPC is sympathetic to AT&T's view that it is appropriate to require IP to PSTN calls to pay intercarrier compensation (ICC) because it requires users of the network to pay for that use. Therefore, access charges on interexchange calls and reciprocal compensation for local calls may be appropriate.

What is not so clear is AT&T's position that VoIP services are jurisdictionally mixed but inseparable and are thus subject to the exclusive jurisdiction of the Commission.⁸ If this is the case how can IP/PSTN traffic be subject to intrastate access charges – unless the Commission has jurisdiction over intrastate access rates? Furthermore, as noted by NASUCA, if such traffic can be classified as intrastate, AT&T provides little explanation of why, in order for IP traffic to qualify for payment of intrastate access, charges for all intrastate traffic must be placed at parity with interstate rates.⁹

AT&T does not specify how much it seeks to recoup through the SLC's and secondarily through increased originating access charges. As NASUCA points out AT&T's methodology is flawed in that it would, at least in part, calculate increases in SLCs based on 2007 intrastate charge revenue – which totally ignores the decline in access minutes of use and revenues over time.¹⁰

⁷ Comments of National Association of State Utility Consumer Advocates (NASUCA) at 3.

⁸ AT&T Petition at 5, n. 15.

⁹ NASUCA at 6.

¹⁰ NASUCA further claims that ILECs have no entitlement to those revenues. *Id* at 7. NASUCA also claims that AT&T fails to recognize state efforts to replace lost revenues and other countervailing revenue factors.

In addition, and in its proposal, AT&T would explicitly recover lost **intrastate** access charge revenue through the **interstate** SLC.¹¹ TOPC agrees with NASUCA's claim that this mechanism "clearly breaks the jurisdictional barrier without justification."¹²

Summary

AT&T suggests that the Commission has failed to comprehensively address compensation for IP/PSTN traffic. As a result AT&T has offered an interim solution to the compensation issue. AT&T seeks a ruling that authorizes compensation for IP/PSTN traffic. In addition it seeks to set its intrastate access rates at parity with its interstate access rates.

TOPC is sympathetic to the view that IP/PSTN traffic should be compensated. However, we are not certain its proposal for interim reform is appropriate. As NASUCA stated "it should be crystal clear that AT&T could, in fact, reduce its intrastate access charges in those states where the intrastate charges exceed the interstate charges, in order to qualify for the AT&T-imposed condition allowing payment of intrastate charges by IP calls, **without** needing to recoup those revenues through the SLC or interstate originating access charges."¹³

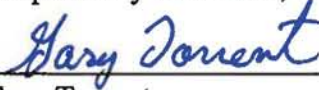
¹¹ Any revenues not captured under the SLC would be recovered through the interstate originating access charge.

¹² NASUCA at 8.

¹³ *Id* at 12.

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Respectfully submitted,



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